

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
PO BOX 6125
KENNEWICK, WA 99336**COPY MAILED****FEB 13 2007****OFFICE OF PETITIONS**In re Application of Whited
Application No. 09/638,017
Filing Date: August 14, 2000
Attorney Docket No. 1644-041

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed August 1, 2006, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action including a requirement for restriction/election mailed December 5, 2001, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on January 6, 2002.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Floyd Ivey signed the petition. Ivey was not an attorney or agent of record at the time the application became abandoned. Therefore, it appears Ivey was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Ivey that the *entire* delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.¹ In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that a portion of the delay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The Office notes attorney Ivey has not been given a power of attorney. A Power of Attorney and Change of Correspondence Address form was filed with the petition. The form properly changes the address of record. However, the form fails to assign anyone a power of attorney. The form

¹ See *Changes to Patent Practice and Procedure*, 62 *Fed. Reg.* at 53160 and 53178; 1203 *Off. Gaz. Pat. Office* at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

states a Power of Attorney is being filed "herewith," but a copy of the Power of Attorney cannot be located. Therefore, a new copy of the Power of Attorney should be filed.

Technology Center Art Unit 1723 will be informed of the instant decision and the application will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Shirene Brantley at (571) 272-3230.



Shirene Willis Brantley
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Office of Petitions